

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PROPET USA, INC.,

Plaintiff,

v.

LLOYD SHUGART,

Defendant.

Civil No. C06-0186 MAT

AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF CONCERNING COPYRIGHT

Plaintiff Propet USA, Inc. ("Propet") hereby alleges as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Propet is a Washington state corporation, with its principal place of business in Auburn, Washington. Propet is in the business of selling and distributing shoes to the public.

2. Defendant Lloyd Shugart ("Shugart") is a professional photographer doing business in Seattle, Washington, under the trade names "Lloyd Shugart Fashion Photography" and/or "Studio 413." Shugart provides professional photography services to the public, including within this judicial district.

3. This is an action for declaratory relief that arises under the copyright laws of the United States, namely 17 U.S.C. § 101 et seq. This Court has subject matter jurisdiction

1 over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201 because this action involves
2 (1) Shugart's overt threats of copyright infringement made against Propet, under 17 U.S.C. § 101
3 et seq., and (2) Propet's need for an adjudication that Propet is either licensed to use certain
4 photographic works produced by Shugart or Propet otherwise owns these works.

5 4. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391(a)

6 5. The Court has personal jurisdiction over Shugart who resides and transacts
7 business in Seattle, Washington.

8 **II. FACTS**

9 6. Propet sells and distributes "Propet" brand shoes throughout the United
10 States. Like other shoe companies, Propet advertises its shoes in various media that require
11 product photographs. In some cases, these photographs show a model wearing a shoe. More
12 often, the photographs are purely a product image, such as the Propet "WindsorWalker" shoe
13 model shown below:



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22 7. From about 1999 through 2005, Propet regularly hired Shugart to take
23 product photos, like the above image, for use in Propet's advertising ("Propet Photos"). There
24 apparently was no written agreement between Propet and Shugart concerning rights, licenses, or
25 ownership of the copyright to the Propet Photos.
26

8. Shugart invoiced Propet for his services. His invoices reflected charges for his time and expenses on a per project basis. In some cases, Shugart charged Propet hourly rates for his services (approximately \$225 to \$275 per hour). More frequently, he charged a flat rate for a full day's work (approximately \$1800 - \$2000 per day).

9. From 2003 – 2005, Propet paid Shugart more than \$100,000 for his services. All of Shugart's invoices were paid in full by Propet. Propet decided to terminate its relationship with Shugart and use other photographers sometime during 2005.

10. Propet used Shugart's photos in the way shoe companies conventionally use shoe photos in their advertising. That is, the Propet Photos appear on Propet's website and in related catalog and other print media.

11. During the years Propet utilized Shugart's services, he never suggested or complained that Propet was using his photos in an inappropriate way, or that Propet was making "unlicensed" use of his photos, or that any limitations existed on how Propet could use these photos to advertise Propet's shoes.

12. However, after Propet terminated its relationship with Shugart, he voiced complaints that Propet was in violation of historical agreements and was using his photos outside the scope of alleged limits placed on Propet's right of use. Specifically, Shugart claimed that Propet was permitted to use the Propet Photos in Propet's own advertising, but Propet was not allowed to permit certain "third party" uses. According to Shugart, unlicensed "third party" uses include (1) Propet's international distributors (e.g., Propet Canada, Inc.) that market the same shoes in other countries, including Canada and Europe; and (2) Propet's on-line retail partners who have used photos of Propet shoes as stock photos in their advertising Propet shoes.

III. CLAIM FOR RELIEF

(Declaratory Relief – Noninfringement of Copyright)

13. Propet refers to and incorporates the preceding paragraphs herein as though set forth in full.

1 14. Propet either owns the Propet Photos it paid Shugart to produce or Propet
2 has an unlimited license to use these works in all reasonable ways related to the sale of Propet-
3 brand shoes, including the right to provide Shugart's photos of Propet-brand shoes to third-party
4 users who have need to advertise these products.

5 15. An actual controversy has arisen and now exists between Propet and
6 Shugart involving the use of and copyright to Shugart's photos under the applicable copyright
7 statutes, 17 U.S.C. § 101 et seq.

8 16. Propet is entitled to injunctive relief:

9 (a) prohibiting Shugart from selling or offering for sale any Propet
10 Photos on E-bay;

11 (b) prohibiting Shugart from transferring any right, title or interest in
12 Propet Photos to third parties without advance written approval; and

13 (c) prohibiting Shugart from threatening Propet customers with
14 copyright infringement relating to their use of Propet Photos.

15 17. Propet has been overtly threatened and has reasonable apprehension that it
16 will be sued for copyright infringement by Shugart. Not only has Shugart threatened Propet with
17 suit, but Shugart has also threatened to sue Propet's customers and others.

18 18. Propet desires a judicial determination of the copyright to the Propet
19 Photos pursuant to 28 U.S.C. § 2201.

20 **IV. PRAYER FOR RELIEF**

21 WHEREFORE, Propet requests the following relief:

22 A. That the court find that Propet's historical use of Shugart's photos of
23 Propet-brand shoes has not violated Shugart's rights to the photos;

24 B. That the court find that Propet is not infringing any right owned by
25 Shugart;

1 C. That Shugart be permanently enjoined from selling or offering for sale any
2 Propet Photos on E-bay;

3 D. That Shugart be permanently enjoined from transferring any right, title or
4 interest in Propet Photos to third parties without advance written approval; and

5 E. That Shugart be permanently enjoined from threatening Propet customers
6 with copyright infringement relating to their use of Propet Photos.

7 F. That Shugart be required to pay Propet's attorney's fees and costs in
8 bringing this action; and

9 G. That Propet be entitled to such further relief as the court deems just and
10 equitable.

11 DATED this 20th day of *March*, 2006.

12 MILLER NASH LLP

13
14 /s/ James L. Phillips

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